IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION (PIL) NO.62 OF 2006

Tarun Jamnadas Ghia ..Petitioner.

Vs.

The State of Maharashtra and others ..Respondents.

....

Mr. T.J. Ghia, Petitioner in person present.
Mr. G.W. Mattos, AGP for Respndents 1 and 2.
Mr. R.P. Sabban for Respondent No.3.

....

CORAM: **SWATANTER KUMAR, C.J. &**
DR. D.Y. CHANDRACHUD, J.

11th October, 2007.

P.C. :

1. The Petitioner is a Chartered Accountant in practice and claims to be qualified to undertake the audit of societies as contemplated under Section 81 (1)(a) and 81(1)(b) of the Maharashtra Co-operative Societies Act, 1960. He was on the panel of auditors maintained by the Divisional Joint Registrar, Co-operative Societies – Respondent No.3. According to the Petitioner the powers of empanelment, removal and other matters relating to functioning of the Chartered Accounts in contemplation to those provision was arbitrary and discretionary; and the Respondents were acting in a very unfair manner. On these

premise the Petitioner prayed for an issuance of an appropriate writ, order or direction directing Respondent No.3 to produce the entire records in connection with the list of societies with basic details like turnover, working capital, audit fees of the previous year and the Respondents be directed to prepare proper guidelines introducing transparency and fairness in empanelment of the auditors for awarding of auditing work in the co-operative societies. The Petitioner has further prayed that Respondent No.3 should publish the list and the consideration for empanelment should be objective and not supported by extraneous criteria.

2. This Petition was contested by the State Government as well as the other Respondents. However, during the pendency of this Writ Petition, the Respondent issued a circular dated 13th August, 2007 amending the previous circulars. This circular was in supersession of the earlier circulars issued on 31st January, 2006 and 23rd May, 2003. All aspects of empanelment and the consequences thereof were dealt with in this circular and according to the Respondents this was most fair and appropriate way of empanelment of auditors. The Petitioner thereafter filed an affidavit on 8th October, 2007 taking up the following objections

even to this circular :

> "1. Does the new circular by the Respondents meet the requirements of objectivity and transparency and would take cognizance of comparative merits of the panel auditors?
>
> 2. Pending the petition alleging many wrongs and manipulations, the Respondent No.3 violated the existing circular by the Commissioner of Co-operation and continued wrongs and manipulations on larger scale. Is not the Respondent No.3 answerable for the same to this Hon'ble Court? The Petitioner has submitted all the evidences, some of them incriminating documents which the Petitioner under the RTI Act but not easily. Initially the Petitioner, had to complain to the State Information Commission and in the process the Respondent No.3 was fined by the Hon'ble SC for not parting with information. The Petitioner obtained information by spending few thousands of rupees. Are not the Respondent No.3 who is an administrative head and a quasi judicial authority alongwith associate officers answerable and accountable for their manipulative and fradulent actions and inactions to the Hon'ble Court?"

3. The contention of the Petitioner is that the Respondents would still act arbitrarily and they have not provided any criteria marks for determining the merit of the Chartered Accountants for allocation of work in terms of Section 81 (1)(a) and 81(1)(b) of the Act. It is a settled principle of law that certain element of discretion has to be permitted in exercise of such powers. The powers of empanelment and/or removal have to be exercised by the

competent authority, obviously in consonance with the rules. It is not disputed that the officers entitled to exercise such powers are statutorily entitled and specified. The Court has no reason to believe as to why such officers would not exercise their power in accordance with law. Any how to put the matter beyond doubt, counsel appearing for Respondents 1 and 3 both stated that though the subject in question is squarely governed by the circular, but still they would keep in mind the norms of empanelment for statutory central auditors of Public Sector banks Select All India Financial Institutions and RBI applicable from the year 2005-06 and insofar as they are applicable to the empanelment of auditors for the societies, they shall be duly applied. However, it is further stated by him that in view of a Division Bench judgment of this Court in case of **Maharashtra Certified Auditors Association v. State of Maharashtra** (2004 (4) All M.R. 490) the categorization is not permissible. Obviously such restriction shall be applicable to the categories stated in that judgment.

4. Another Division Bench judgment of this Court has also been brought to our notice in the case of **Tarun Jamnadas Ghia v.**

Reserve Bank of India where the Petitioner had earlier filed a Writ Petition bearing No.1112 of 2006 decided by a Division Bench of this Court on 26th July, 2006 wherein it was observed that Respondent No.3 on preparing the list in terms of the criteria fixed by Respondent No.1 shall put the same on the website declaring the name of the audit firms in terms of the list prepared by them. The cumulative effect of the above referred discussion would be that the Respondents would act in furtherance to the circular dated 13th August, 2006 read in conjunction with the RBI guidelines insofar as they are applicable and keep in mind the judgment of this Court above referred . The list prepared shall be put up on website.

5. In view of the above discussion, it would not be necessary for this Court to either keep this Petition pending or to issue any further directions. The jurisdiction of this Court to interfere in such matters is a very limited one and would primarily apply to ensuring compliance with the concept of fair play in administrative actions. In the light of this we, dispose of this Petition with the above observations.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.